

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
HERBERT DEAS, :
:
Petitioner, :
:
- against - :
:
MICHAEL CAPRA, :
:
Respondent. :
:
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15-CV-1306 (VSB)

ORDER

Appearances:

Herbert Deas
Pro se Petitioner

Joanna Rachel Hershey
Dennis Andrew Rambaud
Office of the New York State Attorney General
New York, New York
Counsel for Respondent

VERNON S. BRODERICK, United States District Judge:

On November 20, 2015, Magistrate Judge Sarah Netburn issued a report and recommendation, (Doc. 20), recommending that I deny Petitioner’s petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, (the “Report and Recommendation”). Attached to the Report and Recommendation was a document titled Notice of Procedure for Filing Objections to this Report and Recommendation, (*id.* at 11), which stated that the parties would have fourteen days from the service of the Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. On December 11, 2015, Petitioner filed a letter requesting a thirty-day extension of time to file objections to the Report and Recommendation. (Doc. 21.) Although the time to file objections had already

lapsed, I granted Petitioner's request and gave Petitioner until January 29, 2016 to file objections. (Doc. 22.) Petitioner failed to file his objections or request additional time to file the objections, and has not filed any documents in this matter since December 11, 2015.¹


Having failed to file any objection to the Report and Recommendation, Petitioner has waived any right to further appellate review. *See Thomas v. Arn*, 474 U.S. 140, 147-48 (1985) (upholding Sixth Circuit rule that petitioner waives her right to appeal by failing to file objections to Magistrate's report); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000) ("Failure to timely object to a report generally waives any further judicial review of the findings contained in the report."). Accordingly, the Court hereby adopts the Report and Recommendation and, for the reasons therein, dismisses Petitioner's habeas petition with prejudice.

In addition, because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, *see* 28 U.S.C. § 2253, and the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith. Moreover, as petitioner's claim lacks any arguable basis in law or fact, permission to proceed *in forma pauperis* is also denied, 28 U.S.C. § 1915(g); *see also In re Seimon*, 421 F.3d 167, 169 (2d Cir. 2005). The Clerk of Court is requested to enter judgment and terminate this action.

¹ I note that Magistrate Judge Netburn gave Petitioner the opportunity to file a reply memorandum of law in response to Defendant's opposition to his Petition but he failed to file a reply. (Report and Recommendation at 5.)

SO ORDERED.

Dated: October 24, 2016
New York, New York



Vernon S. Broderick
United States District Judge